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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1944

No. 966

R. BERNARD DICKEY,
Petitioner,

vs.

RAISIN PRORATION ZONE No. 1, a proration zone organized under the laws of the State of California, et al.,
Respondents.

PETITION FOR WRIT OF CERTIORARI to the Supreme Court of the State of California.

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PETITION FOR WRIT OF CERTIORARI
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To the Honorable Harlan Fiske Stone, Chief Justice of the Supreme Court of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Petitioner respectfully prays that a writ of certiorari issue to review the decision of the Supreme Court of the State of California, in the case therein numbered L. A. No. 18,573, and entitled, "R. Bernard

Dickey, Plaintiff and Respondent vs. Raisin Proration Zone No. 1, a proration zone, etc., et al., Defendants and Appellants".

FOREWORD.

Petitioner's property (40,494 pounds of raisins) was taken from him, without his consent and without compensation, and pledged as security for the debts of his neighbors. By a 4 to 3 vote, the California Supreme Court upheld this peculiar and unprecedented pledge transaction, and held it to be authorized by a California statute which did not even mention such a transaction, or anything remotely resembling it.

In so deciding, the California Supreme Court reversed a contrary ruling of the Fresno County Superior Court, adjudging this transaction to be wholly unauthorized and invalid, which conclusion of the Superior Court had been unanimously approved by the California District Court of Appeal before the Supreme Court took over the case.

STATEMENT OF CASE.

This case arose under the California Agricultural Prorate Act (Cal. Stats. 1933, p. 1969), adopted in the depression year 1933 to provide a solution for agricultural overproduction, and its consequent market demoralization. This statutory solution consists of the formation of so-called proration "zones" to control and regulate the marketing of agricultural crops in

years of crop surplus. The essence of this statutory plan is that the "surplus" portion of a given crop is temporarily taken off the market and impounded with a proration "zone" set up to handle that particular type of crop. All the growers are compelled by law to deliver to the "zone" the "surplus" portion of their crop (a given percentage determined each year by the zone officials). This surplus is thus kept off the current markets and consequently does not demoralize them. The zone is supposed to hold and dispose of said "surplus" as agent for the contributing growers, and for their account.

RAISIN PRORATION ZONE NO. 1.

In 1938, some eight thousand raisin growers in California, including petitioner, were compelled by a raisin proration program set up under this statute, to deliver 20% of their 1938 raisin crop to Raisin Proration Zone No. 1. This 20% was the "surplus" portion of the crop, and was to be impounded with the zone in accordance with the Prorate Act. The other 80% of the crop was the so-called "free" tonnage, that is, the portion which could be safely marketed in the current channels of trade without unduly depressing the market. The grower was privileged to do what he pleased with this 80% portion of his crop.

Petitioner (as his 20%) delivered some 40,494 pounds of raisins to this "stabilization" or "surplus" pool of the zone. Later, when he and certain fellow growers investigated to ascertain what had become of these "stabilization pool" assets, they learned that

Commodity Credit Corporation claimed a pledge lien on these raisins.

PURPORTED PLEDGE TO COMMODITY CREDIT CORPORATION.

Commodity predicated its claim to these raisins upon the following transaction. In 1938 the officials of this Raisin Proration Zone No. 1 worked out a rather complicated deal whereunder any raisin grower could borrow, in individual loan transactions and on non-recourse loans, from the Raisin Proration Association (a private corporation set up by the officers of this Raisin Zone as an instrumentality of the zone), $50.00 a ton on their "free" (i.e., 80%) raisins. The funds to make these private loans were obtained by Raisin Proration Association from Commodity. Such borrowing growers, in addition to executing their personal notes to evidence such loans, were required to specifically pledge, as security for this debt, not only their "free" tonnage (80%) but also their interest in the stabilization pool raisins (i.e., 20%). The zone officials also undertook to pledge to Commodity, as further security for these individual loans to growers, *all* the raisins in the "stabilization pool" of the zone, including the raisins delivered to that pool by petitioner and some four thousand other growers who did not elect to borrow on their raisins. (R. 41.) In short, Commodity claimed to hold, under this last mentioned pledge, all of the raisins of the "surplus" pool, even though almost half of the growers contributing to that pool borrowed nothing on their raisins.

The validity of this pledge is the basic issue in this case.

HISTORY OF THIS LITIGATION.

Shortly after becoming aware that Commodity thus claimed these raisins, petitioner instituted this litigation in the Superior Court of the State of California, in and for the County of Fresno, to enjoin the Raisin Proration Zone No. 1 and Commodity from consummating this pledge transaction. (R. 1.) That Court, after due consideration of the matter (on exhaustive briefs and other presentation) rendered judgment (pursuant to motion by plaintiff for judgment on the pleadings) that this purported pledge transaction was not authorized by the Prorate Act, and was illegal; and granted to petitioner the relief sought by him in behalf of himself and his fellow growers. (R. 87.)

The zone and Commodity appealed from this judgment to the District Court of Appeal of the State of California, Fourth Appellate District. That Court, by unanimous decision, upheld the Superior Court's conclusion that this pledge transaction was not at all authorized by the Prorate Act, and was invalid:

> "We must hold that the transaction we have described * * * was unauthorized by any express or implied powers granted by the Agricultural Prorate Act. * * *
>
> "None of the powers assumed and used in this complicated transaction were necessary to carry out the inherent or express powers granted by the act and it would be judicial legislation of the worst kind to hold that those powers were granted by implication." (140 P. (2d) 53, 65.)

However, on certain technical grounds arising out of the pleadings (estoppel, etc.), the District Court of

Appeal reversed the judgment of the Superior Court and remanded the case for further proceedings in the Superior Court covering these technical points.

Thereafter, the California Supreme Court, on application of Commodity, granted a hearing in that Court, and ultimately, on August 31, 1944, rendered a decision (R. 99) to the effect that this pledge transaction was valid, and authorized by the Prorate Act. (Four justices concurred; three dissented.)[1] The Supreme Court not only reversed the judgment of the Superior Court, *but ordered the latter Court to dismiss the case.* (R. 116.)

It is conceded by all (as it must be) that nowhere in the Prorate Act was there any mention of such a transaction as that involved in this case, nor any language expressly authorizing any such transaction. The majority of the Supreme Court, however, arrived at the conclusion that the power to make this pledge could be read into the statute under the doctrine of "implied statutory powers".

On September 15, 1944, petitioner duly petitioned the California Supreme Court for a rehearing, which was within the time allowed by California law. This petition was denied on September 28, 1944, with three justices voting for a rehearing.

Petitioner has thus exhausted his remedy in the California Supreme Court, the highest State Court.

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[1]In short, of the twelve judges who gave due and careful consideration to this important case (two Superior Court judges, three Appellate Court justices, and seven Supreme Court justices), eight were firmly of the view that this novel and peculiar transaction was wholly unauthorized and illegal; the other four, however, constituted the majority of the California Supreme Court.

Within three calendar months from the date of denial of said petition for rehearing, and on December 6, 1944, the United States Supreme Court granted an extension of time to January 20, 1945, for the filing of this petition for certiorari and supporting brief and record; thereafter, on December 30, 1944, this Honorable Court further extended said filing date to February 15, 1945; thereafter, and on February 8, 1945, this Honorable Court further extended said filing date to February 20, 1945.

While petitioner sincerely feels that the construction placed by the majority opinion of the California Supreme Court upon this statute does violence to, and contravenes, all settled principles of statutory construction, he will limit himself herein to an attempt to show this Honorable Court that, *as thus construed by said Supreme Court,* this California statute is unconstitutional because it violates the Fourteenth Amendment to the Constitution of the United States, by taking petitioner's property without due process of law and by denying him equal protection of the laws. It is well settled that an otherwise valid state statute may be rendered violative of the Fourteenth Amendment by a judicial construction thereof:

> "The violation is none the less clear when that result" (i.e., denial of due process) "is accomplished by the state judiciary in the course of construing an otherwise valid state statute." (*Brinkerhoff-Faris Trust & Savings Co. v. Hill,* 281 U. S. 673, 680, 50 S. Ct. 451; *Ouncby v. Morgan,* 256 U. S. 94, 65 L. Ed. 837.)

JURISDICTION OF THIS COURT.

The jurisdiction of this Honorable Court is invoked under Section 237(b) of the Judicial Code, which reads as follows:

> "It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State * * * where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution, * * * of the United States; or where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution * * * of the United States * * *." (28 U.S.C.A. § 344, Par. (b), p. 206.)

THE FEDERAL QUESTION.

Petitioner claims that if the Prorate Act is to be construed as authorizing the pledge transaction involved in this case, said statute is unconstitutional and void under the Fourteenth Amendment to the Constitution of the United States, because:

(1) It involves a taking of petitioner's property without due process of law;

(2) It denies to petitioner the equal protection of the laws.

THE TIME AND MANNER OF RAISING THE FEDERAL QUESTION.

The Superior Court so construed this statute as to obviate any question as to its constitutionality. The California District Court of Appeal did likewise. The question as to its constitutionality first arose because of the construction placed upon this statute by the California Supreme Court. When that Court so construed this legislation as authorizing this pledge transaction, that Court, for the first time in the history of this litigation, exposed the statute to this charge of unconstitutionality. When the Supreme Court thus interpreted the statute in a manner contrary to the construction placed upon it by the two lower Courts, petitioner promptly petitioned the Supreme Court for a rehearing, and in his petition[2] emphasized that this construction thus adopted by the Supreme Court would render the statute violative of the Fourteenth Amendment to the federal Constitution, because it would involve both a taking of petitioner's property without due process of law and also result in a denial to him of equal protection of the laws.

The California Supreme Court, in passing upon this petition for rehearing, considered and passed upon and rejected this constitutional contention of

[2]Inasmuch as only a part of the petition for rehearing filed in the California Supreme Court is printed in the transcript of record herein (R. 120), we have, at the suggestion of the clerk of this Honorable Court, printed it in full as an appendix to our brief filed herewith. A complete copy thereof, duly certified by the clerk of the Supreme Court of the State of California, is, of course, on file in the United States Supreme Court in this case.

petitioner. (See Certificate of Chief Justice of the California Supreme Court, Appendix to Brief, p. i.)

Under the foregoing circumstances, there can be, we respectfully submit, no question but that the federal question was raised in a timely manner and that the proper federal jurisdictional predicate is present in this case. (Brief, p. 2.)

PRORATE ACT, AS CONSTRUED BY CALIFORNIA SUPREME COURT, VIOLATES FOURTEENTH AMENDMENT TO CONSTITUTION OF THE UNITED STATES.

Summary Statement.

Petitioner alleges and respectfully submits that the Prorate Act, as thus construed by the California Supreme Court, violates the Fourteenth Amendment, because:

I. THIS PLEDGE TRANSACTION TOOK PETITIONER'S PROPERTY WITHOUT DUE PROCESS OF LAW, BECAUSE:

A. IT WAS NOT A PROPER EXERCISE OF POLICE POWER, BECAUSE:

1. It was not necessary to promote or protect the public welfare, morals, health, or safety, because:

a. It was not in any manner a part of the stabilization plan authorized by the Prorate Act. (Infra, p. 13.)

b. It was not at all necessary to the achievement of the legitimate objec-

tives of this statutory stabilization program. (Infra, p. 14.)

c. This pledge transaction was and is fundamentally inconsistent with the basic spirit and purpose of the Prorate Act in at least two important respects. Firstly, it exposes the stabilization pool raisins to competition with the "free" raisins. (Infra, p. 17.) Secondly, it involves an unlawful delegation by the Zone officials of their fiduciary duties. (Infra, p. 19.)

2. This transaction went far beyond merely restricting or limiting petitioner's property rights; it entirely confiscated them, allegedly for the public use and benefit. Such a "taking" cannot be justified under the police powers. (Infra, p. 19.)

B. THIS TAKING OF PETITIONER'S PROPERTY CANNOT BE JUSTIFIED AS A TAKING UNDER EMINENT DOMAIN FOR THE PUBLIC USE AND BENEFIT, BECAUSE:

1. No compensation was paid petitioner.

2. No hearing was afforded to fix or determine compensation.

C. THIS PLEDGE TRANSACTION AMOUNTED, IN ESSENCE, TO THE TAKING OF PETITIONER'S PROPERTY FOR THE PRIVATE BENEFIT AND USE OF HIS NEIGHBORS, WITHOUT HIS CONSENT AND WITHOUT COMPENSATION.

II. This Loan and Pledge Transaction Denies to Petitioner Equal Protection of the Laws Because It Imposes Upon Petitioner's Legitimate Business and Property Various Unnecessary and Unreasonable Restrictions, Liabilities and Impairments Not Imposed Upon Other Similar Businesses and Properties.

We will now briefly amplify these several salient points. In our accompanying brief we will present a fuller discussion of the supporting legal authorities.

I. THIS PLEDGE TRANSACTION TOOK PETITIONER'S PROPERTY WITHOUT DUE PROCESS OF LAW, BECAUSE:

A. IT WAS NOT A PROPER EXERCISE OF THE POLICE POWER, BECAUSE:

1. It Was Not at All Necessary to Promote or Protect the Public Welfare, Morals, Health, or Safety.

It is, of course, well settled that a plan or program authorized by a statute, which materially restricts or impairs private property rights, cannot be justified under the "police power" unless it appears that such plan is necessary to promote the public welfare, health, morals or safety; and that the method or means employed to accomplish the public objective must be reasonable; and the statutory plan must not go beyond the necessities of the case. (Brief, p. 4.)

When judged by these settled standards, this loan and pledge transaction involved in our case is, we respectfully submit, wholly unjustifiable under the "police powers".

(a) It was not in any manner a part of the stabilization plan authorized by the Prorate Act.

The stabilization plan authorized by this statute, to protect agricultural markets against crop overproduction, consists simply of the withdrawal of the "surplus" portion of the crop from the current markets by impounding it with the zone as trustee for the contributing growers. This is fully sufficient to, and it does, accomplish the statutory objective of market stabilization. This is the only proration plan authorized or contemplated by the statute.

In 1938, the Program Committee of the Raisin Zone, after a study of all pertinent data and factors, concluded and determined that 80% of the 1938 raisin crop could be allowed to go to market unrestricted in time or volume, without in any way jeopardizing or glutting the markets. It thereupon formally put into effect the 20% proration plan above mentioned.

The withdrawal of this 20% from the current channels of trade was all that was necessary to, and it did, stabilize the market for that season. The California District Court of Appeal well epitomized this:

> "We can see nothing obscure, uncertain or ambiguous in the language used in the Agricultural Proration Act. Its purposes are clearly set forth. They are to stabilize the market price of an agricultural product by withholding from the market the surplus portion of the crop that cannot be marketed without crowding the market price below the cost of production." (140 P. (2d), at p. 64.)

This loan and pledge transaction was not in any manner a part of this proration plan. The statute says nothing about any such scheme. This significant omission alone effectively refutes any claim that this pledge was a necessary part of the police-power program authorized by the statute. If, as the California Supreme Court assumes, this loan and pledge program was so necessary to accomplish the legitimate objectives of this statute, why did not the California Legislature so declare? If it had considered such a scheme necessary, it no doubt would have meticulously and expressly provided for it. Police power is, of course, a function of the legislative branch, not the judiciary.

(b) This loan transaction and pledge was not at all necessary to the attainment of the legitimate objectives of this statute.

Any claim that this loan or pledge transaction was necessary to achieve the stabilization authorized by this statute is clearly unsound. This is true for several reasons.

Said pledge transaction was not necessary in order to keep the 1938 raisin "surplus" off the market because this was achieved by the mandatory 20% proration plan.

It was not necessary to prevent a market demoralization. This was accomplished by the 20% proration plan.

Nor was this loan and pledge transaction necessary in order to protect the market against the "free" (i.e., 80%) portion of the crop. This, we believe, is self-evident. The market did not need protection against

this portion of the crop. The market was able to absorb all that portion of the crop without undue strain or demoralization. This fact was carefully and officially determined by this Raisin Zone in the discharge of its proration duties under this statute. (Brief, p. 13.) That is why it ordered proration of only 20% of the crop.

Any assumption or statement that this pledge transaction (or any other scheme) was necessary to protect the 1938 market against the "free" portion of the crop is, we respectfully submit, patently illogical and unsound. The very idea of this proration plan was that the growers would be free to market their "free" raisins at any time and in any manner they choose. In short, the market needed no protection against the "free" portion of the crop.

Furthermore, such a withdrawal plan and program is the furthest point to which such a plan can constitutionally go. It cannot and should not go beyond the necessities of the case. The loan and pledge transaction aforementioned went far and remotely beyond any public necessities in this case.

Even if a loan program had been necessary, this pledge was not.

Moreover, and entirely apart from the foregoing, and assuming simply for sake of argument that a program of private *loans* to growers was needed in 1938 to keep them from "dumping" their "free" raisins on the market (this is not true), it is very clear that such a *loan* program could have been arranged for the powers without resorting to the un-

precedented and indefensible procedure of hypothecating Mr. Dickey's property to secure his neighbors' debts. In short, even if such individual loans had been necessary to protect the public welfare, *this particular pledge transaction certainly was not.* If certain (or many) necessitous growers had needed personal financing to enable them to carry their "free" raisins until they could take advantage of the market's fluctuations to sell at the "peak", they could have, and should have been supplied with such financing on the security of their own raisin holdings. In fact, just such financing has been provided in other years with government funds even when there was no zone or proration plan in effect. It is significant, however, that in said other years the loan plans did not involve any attempt to pledge one grower's raisins to secure his neighbor's debts.

Any attempt to answer the foregoing by claiming that Commodity without the security of these stabilization pool raisins would not have loaned the borrowing growers as much per ton as was loaned in 1938, not only is immaterial, we respectfully submit, but it serves to further demonstrate and confirm the petitioner's position herein because it shows that his property was taken and used to enable his neighbor to borrow more on his crop.

Incidentally, it should be noted that *the basic premise* of the majority opinion in the California Supreme Court is this very assumption that this loan and pledge transaction was necessary in 1938 because:

> "Without available financial support many of the growers would have been compelled by eco-

> nomic necessity to throw their 'free' crops on the market as soon as possible, thus causing a collapse in prices." (R. 109.)

This factual assumption by the California Supreme Court is entirely unsupported by any evidence or other competent support in the record. Moreover, it is contradicted by the record in this case consisting of the official findings and formal declarations of the Raisin Proration Zone No. 1 when it put into effect this 1938 proration program. (Brief, p. 14.) Furthermore, the making of this basic factual assumption by the Court without giving petitioner an opportunity to produce evidence with respect to said important issue of fact is, in and of itself, a serious denial of due process of law. (Brief, p. 15.)

Equally unsupported, but even more surprising, is the majority assumption that the basic purpose of the Prorate Act is that of enabling these zone officials to so juggle and manipulate agricultural marketing as to enable the farmers to secure from the purchasing public "maximum economic returns". (Brief, p. 19.)

(c) This pledge transaction is fundamentally inconsistent with the spirit and purpose of the Prorate Act, because:

(aa) It exposes the "surplus" raisins to competition with the "free" portion of the crop.

A pledge invites a pledge sale, which in turn necessarily connotes an opportunity for the pledged article to freely enter the channels of trade. Thus, if the "implied" power to hypothecate these stabilization pool raisins is once conceded, the fundamental object

of the Prorate Act (i.e., keeping these raisins out of the channels of trade) is jeopardized and can be defeated. Justice Schauer, in his able dissenting opinion in the California Supreme Court, succinctly summed up this phase:

> "In the light of the scrupulous care and particularization shown by the Legislature in limiting the power of the committee relative to disposal of the surplus so as to guard against adversely affecting the market for the free crop, it was not reasonable to assume that in the same act the Legislature intended to give the committee unbridled power to hypothecate that surplus *and so subject it to the possibility of forced sale in direct competition with the free crop.*" (Italics are Justice Schauer's.) (R. 119.)

It is no answer to this to state that such a pledge sale has not occurred, or would not occur, or might in some way be circumvented. It is settled that in testing the constitutionality of a statute or a transaction thereunder, the criterion is what could be done pursuant thereto, and not necessarily what has been done:

> "What may reasonably be done under a statute is the test of its validity." (*Abbott v. McNutt,* 218 Cal. 225, 230.)

> "The supreme test of the validity of any such law is not what may have been done under it; not, as here, what the contracting parties may by convention agree to do or not to do under it, but it is what may be done under it. (Lewis' Sutherland on Statutory Construction, sec. 107.)" (*City of Los Angeles v. Lewis,* 175 Cal. 777, 783.)

(bb) Under the Prorate Act the Zone is charged with the important fiduciary duty of controlling and disposing of the stabilization pool raisins for the benefit and account of the growers. Under this pledge this important trust duty is delegated to strangers.

The Prorate Act expressly confers and enjoins upon the Program Committee of the zone the very important and fiduciary power and duty of controlling and disposing of the stabilization pool raisins, including the duty of marketing these surplus crops to the best advantage of the growers, when and if this can be done without unduly depressing the market. The pledge transaction involved in this case is directly inconsistent with this phase of the act. It involves an improper abdication and delegation of this fiduciary duty because it vests in strangers to this zone this important power of controlling the disposition of these trust assets. (Brief, p. 25.)

2. This Transaction Went Far Beyond the Point of Merely Restricting or Limiting Petitioner's Property Rights; It Entirely Confiscated Them Allegedly For the Benefit of the Public.

That this litigated pledge transaction involves an actual and complete taking of petitioner's 40,494 pounds of raisins is, of course, indisputable.

When a statutory plan or program does not merely undertake to regulate, restrict or control private property, but actually takes it away from the owner, allegedly in the public interest, it is the rule, at least in the case of property which is harmless and innocuous *per se*, that "police power" vanishes and the doctrine of eminent domain enters and controls. This Honorable Court, speaking through Justice Holmes,

enunciated this principle in the leading case of *Pennsylvania Coal Co. v. Mahon,* 260 U. S. 393, 67 L. Ed. 322, 43 Sup. Ct. 158:

> "The general rule at least is that while property may be regulated to a certain extent if regulation goes too far it will be recognized as a taking." (260 U. S., at p. 415.)
>
> "Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law. As long recognized, some values are enjoyed under an implied limitation and must yield to the police power. But obviously the implied limitation must have its limits or the contract and due process clauses are gone. One fact for consideration in determining such limits is the extent of the diminution. When it reaches a certain magnitude, in most if not all cases there must be an exercise of eminent domain and compensation to sustain the action." (260 U. S., at p. 413.)

B. THIS TAKING OF PETITIONER'S PROPERTY CANNOT BE JUSTIFIED AS A TAKING UNDER EMINENT DOMAIN FOR THE PUBLIC USE AND BENEFIT.

1. No Compensation Was Paid Petitioner.

It is undeniable that no *direct* compensation was paid petitioner for these raisins taken from him, allegedly for the public benefit.

Any claim that this transaction can be justified under eminent domain on the theory that petitioner was compensated by the alleged "benefit" accruing from this transaction to his "free" tonnage is legally unsound, as well as specious. In the first place, if the

"free" raisins were enhanced in value it was because of the withdrawal of the "surplus" 20% from the market, and not because of this pledge transaction. Secondly, if it is claimed that this pledge transaction kept other growers from "dumping" their "free" raisins on the market and "collapsing" the price structure, and hence petitioner was thus benefited, such a claim is both factually unsupported (see p. 17, supra; also Brief, p. 12) and is untrue. It is untrue because such a "dumping" would have been a distinct benefit to petitioner instead of a calamity. Petitioner, a substantial grower, could, and customarily did, hold his raisins for extended periods of time. The 1938 market was able to and did absorb all the 80% portion of the crop. The Zone officials knew and officially declared that it could do this. In short, the market (i.e., the public) needed these raisins and absorbed them. Consequently, if the absence of this loan and pledge transaction would have meant that many growers would have "dumped" their "free" raisins and collapsed the *then* price structure (which is not at all true) so much the better for petitioner. After the market had absorbed these "jettisoned" raisins, the price for his "free" raisins would have, of necessity, been a more advantageous one.

But entirely apart from the foregoing, it is clear that such alleged "benefits" as those mentioned in the preceding paragraph fall into the category of indirect, speculative and conjectural benefits. It is well settled that such alleged benefits play no part in the law of eminent domain.

"Benefits which are remote, contingent and speculative cannot be considered." (*Baumann v. Ross,* 167 U. S. 548, 42 L. Ed. 270, 17 S. Ct. 966; *Columbia Heights Realty Co. v. Rudolph,* 217 U. S. 547, 54 L. Ed. 877, 30 S. Ct. 381; *Kennedy v. Indianapolis,* 103 U. S. 599, 26 L. Ed. 550.)

2. No Hearing Was Afforded to Fix or Determine This Compensation.

Due process of law in eminent domain requires, as an indispensable requisite, that in order that compensation may be fixed, and in order that the extent of any offsetting benefits may be definitely determined, a formal hearing must be had so that the exact monetary value of the property taken and of the alleged benefits to the remaining property may be adjudicated. (18 *Am. Jur.,* p. 965, § 322; 29 *C. J. S.,* p. 904, § 100; *North Laramie Land Co. v. Hoffman,* 268 U. S. 276, 69 L. Ed. 953, 45 S. Ct. 491; *Bragg v. Weaver,* 251 U. S. 57, 64 L. Ed. 135, 40 S. Ct. 62.)

It is indisputable that no such hearing was afforded petitioner in this case.

C. THIS PLEDGE TRANSACTION AMOUNTED, IN ESSENCE, TO THE TAKING OF PETITIONER'S PROPERTY FOR THE PRIVATE BENEFIT AND USE OF HIS NEIGHBORS, WITHOUT HIS CONSENT AND WITHOUT COMPENSATION.

When this entire loan scheme and pledge is stripped of all its verbiage and circumlocution, it will be seen, we respectfully submit, that the above stated appraisal is fair and accurate. Such schemes have been consistently condemned by this Honorable Court from earliest times, viz.:

"The taking by a state of the private property of one person or corporation, without the owner's consent, for the private use of another is not due process of law, and is a violation of the fourteenth amendment of the Constitution of the United States. *Wilkerson v. Leland,* 2 Pet. 627, 658; *Murray v. Hoboken Co.,* 18 How. 272, 276; *Loan Association v. Topeka,* 20 Wall. 655; *Davidson v. New Orleans,* 96 U. S. 97, 102; *Cole v. La Grange,* 113 U. S. 1, 5 Sup. Ct. 416; *Fallbrook Dist. v. Bradley,* 164 U. S. 112, 158, 161, 17 Sup. Ct. 56; *State v. Chicago, M. & S. P. Ry. Co.,* 36 Minn. 402, 31 N. W. 365." (*Missouri Pacific Ry. Co. v. State,* 164 U. S. 403, 417, 17 Sup. Ct. 130.)

II. THIS LOAN AND PLEDGE TRANSACTION DENIES TO PETITIONER EQUAL PROTECTION OF THE LAWS BECAUSE IT IMPOSES UPON PETITIONER'S BUSINESS AND PROPERTY VARIOUS UNNECESSARY AND UNREASONABLE RESTRICTIONS, LIABILITIES AND IMPAIRMENTS NOT IMPOSED UPON OTHER SIMILAR BUSINESSES AND PROPERTIES.

It cannot be disputed that petitioner is engaged in a lawful business and that this property of which he has been deprived is legitimate and harmless. In fact, as a farmer, petitioner is a member of a class which, by its arduous labors, its large investments and its incessant gambles with nature and other factors, has contributed very materially to the upbuilding of our country.

Why should petitioner be burdened with the liabilities and property impairments which this disputed pledge transaction entails, when his fellow citizens in

other equally important businesses and industries are not thus burdened?

For all of the reasons set forth earlier in this petition, this pledge program involved in this case, resulting as it did in a complete taking of petitioner's property, was and is highly discriminatory, unreasonable and unnecessary. It therefore contravenes the basic constitutional prohibition against denial of equal protection of the laws.

> "Police regulations equally with other laws are subjected to this prohibition." (12 *C. J.*, p. 1144, § 878.)
>
> "But we cannot at all agree that a police regulation is not, like any other law, subject to the 'equal protection' clause of the 14th Amendment. * * * The constitutional guaranty entitles all persons and corporations within the jurisdiction of the state to the protection of equal laws, in this as in other departments of legislation. It does not prevent classification, but does require that classification shall be reasonable, not arbitrary, and that it shall rest upon distinctions having a fair and substantial relation to the object sought to be accomplished by the legislation." (*Atchison T. & S. F. Ry. Co. v. Vosburg,* 238 U. S. 56, 59 L. Ed. 1199, 35 S. Ct. 675.)

No valid or reasonable basis of classification underlies the discriminations which this pledge transaction works against petitioner and his fellow non-borrowing growers. Assuming, simply for sake of argument, that a loan program might have been essential in 1938 to assist the needy growers in holding their crops for the

"right price", certainly there is no reasonable basis for saying that, in order to assist them in getting such personal financing, their neighbors' property could be used as further security for such loans. Such financial assistance could have, and should have, been predicated on the "borrowers" property and not that of the "non-borrowers". In short, this discrimination against the non-borrower is utterly unnecessary, unreasonable and arbitrary.

Before concluding, petitioner wishes to emphasize two things in connection with the foregoing discussion of this raisin program and its relation to the police power.

The first is that petitioner is not asking this Honorable Court to forbid or vitiate the basic proposition of protecting agricultural markets from collapse or serious demoralization by regulating, under reasonable statutory proration plans, the flow of crops to market in years of crop surplus. He does ask this Honorable Court, however, to prevent these salutary programs and objectives from being corrupted and perverted by such unfair, unnecessary and discriminatory schemes as the pledge transaction which is sought, by a doctrine of "implied power", to be engrafted on the Prorate Act in this case. This anomalous scheme is, we believe, just the type of improper invasion of property rights which the venerable Justice Holmes had in mind when he warned:

> "When this seemingly absolute protection is found to be qualified by the police power, the

> natural tendency of human nature is to extend the qualification more and more until at last private property disappears. But that cannot be accomplished in this way under the Constitution of the United States." (*Pennsylvania Coal Co. v. Mahon,* 260 U. S. 393, 415.)

The second thing which petitioner desires to stress is that it should be remembered in all of this that, basically, the *only* constitutional justification for the imposition of these marketing proration programs is that the particular type of agricultural industry in question (lemons, raisins, etc.) is of sufficient importance to the public economy that its ruin by market collapse would cause serious injury to the public economy. This basic criterion fits, of course, a great many industries, not only in the agricultural field, but in numerous other fields of business and industrial activity, many of which are far more important to the state and national economy than the raisin industry. For these reasons, the precedent established by the decision of the California Supreme Court in this case far transcends, in its importance, the mere property, parties or even the industry involved in this cause.

> "A wrong decision does not end with itself. It is a precedent, and, with the swing of sentiment, its bad influence may run from one extremity of the arc to the other." (261 U. S., at 561.)

REASONS FOR GRANTING WRIT OF CERTIORARI.

Petitioner respectfully submits that the issuance of the writ prayed for herein is justified, because:

1. He has been unlawfully deprived of his property by a state statute contrary to the Fourteenth Amendment; he has exhausted his efforts to secure relief in the State Courts; and now turns, as his last resort, to the Honorable Supreme Court of the United States, the citadel of constitutional protection.

2. The unlawful impairment and deprivation of property rights sanctioned by the California Supreme Court in this case is so drastic and dangerous a precedent as to warrant and require the intervention of this Honorable Court.

3. To say the very least, the problems of constitutional law to which this novel and peculiar transaction in this case give rise are of sufficient gravity and scope as to justify deliberate and careful consideration by this Honorable Court.

WHEREFORE, petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Supreme Court of the State of California, for a review by this Honorable Court of the proceedings in said Supreme Court of the State of California in the case numbered therein L. A. No. 18,573 and entitled, "R. Bernard Dickey, plaintiff and respondent vs. Raisin Proration Zone No. 1, et al., defendants and respondents"; and petitioner further prays that upon such review said decision of the Supreme Court of California be set aside

and reversed, and that said Court be instructed to issue its judgment affirming the judgment of the Superior Court of the State of California, in and for the County of Fresno; and that your petitioner have such other and further relief as may be meet and proper.

Dated, San Francisco, California,
February 14, 1945.

WALTER M. GLEASON,
MAX RADIN,
MORGAN J. DOYLE,
Counsel for Petitioner.

Office - Supreme Court, U. S.
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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1944

No. 966

R. BERNARD DICKEY,
Petitioner,

vs.

RAISIN PRORATION ZONE No. 1, a proration zone organized under the laws of the State of California, et al.,
Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

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